ness the happening of the event or the existence of the fact, as those who testify positively. This apparent exception to the general rule was applied in the following cases, where the existence of a headlight, the ringing of the locomotive's bell or the sounding of its whistle, was in question. *Killian* v. *Ga. R. R. & Banking Co.*, 97 Ga. 727; *Stanley* v. *Cedar Rapids & M. C. Ry. Co.*, 119 Iowa 526; *State ex rel. Essex* v. *Kansas City, Fort S. & M. Ry. Co.*, 70 Mo. App. 634; *Cleveland, C. C. & St. L. Ry. Co.* v. *Richardson*, 19 Ohio Cir. Ct. R. 385; *Haun* v. *Rio Grande, W. Ry. Co.*, 22 Utah 346. Some courts go so far as to hold that testimony, to the effect that an event did not happen or that a fact did not exist, is not negative, if the witness giving it was in as advantageous a position to see and hear, as those who testify that it did happen or exist. *Grabill* v. *Ren*, supra; *Chi. Consol. Traction Co.* v. *Gervens*, 113 Ill. App. 275; *Lonis* v. *Lake Shore & M. S. Ry. Co.*, 111 Mich. 458; *Cleveland, C., C. & St. L. Ry. Co.* v. *Richardson*, supra; *Cox* v. *Schuylkill Valley Traction Co.*, 214 Pa. St. 223.

GARNISHMENT—EFFECT OF APPEARANCE OF GARNISHEE.—In garnishment proceedings, the return of the sheriff of his only service in the case, did not state that the garnishee had been presented with a copy of the writ of garnishment as was required by statute. The garnishee appeared and answered. On appeal from an order discharging garnishee, *Held*, that the garnishee can not by voluntary appearance waive jurisdictional defects so as to confer jurisdiction over the *res*, but can only waive such defects as affect him personally, and hence could object to the failure to make proper service upon him at any time before the money was paid by him and applied to the judgment. *Bristol* v. *Brent* (*Atchison T. & S. F. Ry. Co., Garnishee*) (1909), — Utah —, 103 Pac. 1076.

The claim of the appellant is that the garnishee by its appearance and answer waived all defects in the service of the writ and thus conferred upon the court jurisdiction of the person and of the res, namely, the debt. Upon this question there is much dispute. Cases can be found in almost half of the states upholding the contention of the appellant. The appearance by attorney of a party summoned as a garnishee, cures any defect in the service of the writ of garnishment. *Mercer* v. *Booby*, 6 Fla. 723. Appearance and answer of a garnishee is a waiver of objections to the manner of garnishment summons. *Moody & Bigelow* v. *Alter Winston Co.*, 59 Tenn. 142. *Betancourt* v. *Eberlin*, 71 Ala. 461. *Schober* v. *Mather*, 49 Pa. St. 21. When a garnishee appears and answers interrogatories, neither he nor the principal defendant can be heard to complain of the insufficient service on the garnishee. *Lupton* v. *Moore*, 101 Pa. St. 318; *Nat. Bank of Com. of Chi.* v. *Titsworth*, 73 Ill. 591; *Wisecarver* v. *Braden*, 146 Pa. 42; *Carter* v. *Koshland*, 12 Or. 492; *Baltimore etc. R. R. Co.* v. *Taylor*, 81 Ind. 24. As is said by the court in the principal case, careful examination will reveal the fact that the courts, almost without exception, which extend the doctrine of waiver beyond the personal rights of the garnishee, do so upon the general principle, that a party by general appearance waives all defects in process and in the service thereof. Garnishment is a proceeding in rem. The res is the debt. It is

essential to have jurisdiction, both of the garnishee, the person, and of the res. Jurisdiction of the person may be waived but jurisdiction of the res must be obtained in the manner prescribed by statute; 2 SHINN, ATTACHMENT 610; ROOD, GARNISHMENT, §§ 269 to 275, inclusive. If the law therefore requires personal service upon the garnishee by delivery of a copy of the writ to him, this delivery must be made in order to authorize the court to proceed against him. Cases quite as numerous as those holding a contrary doctrine may be found supporting these authorities and the decision in the principal case. A garnishee can not confer jurisdiction over the res by voluntary appearance. *Cole* v. *Utah Sugar Co.*, 99 Pac. 681; *Hathorn* v. *Robinson*, 98 Me. 334; *McDonald & Co.* v. *Moore*, 65 Iowa 171. *Epstein* v. *Salorgne*, 6 Mo. App. 352; *Mosher* v. *Banking Co.*, 6 Mo. App. 599. Where in garnishment proceedings the writ served on the garnishee is invalid defendant's appearance without objection, though a waiver of the summons upon him personally does not validate the attachment. *McGuire* v. *Church*, 49 Conn. 248; *State* v. *Duncan*, 37 Neb. 631, 56 N. W. 214; *Raymond* v. *Rockland Co.*, 40 Conn. 401; *Altona* v. *Dabney*, 37 Or 334; *Hebel* v. *Amazon Ins. Co.*, 33 Mich. 400; *Fletcher* v. *Wear*, 81 Mo. 524; *Masterson* v. *Mo. Pac. R. R. Co.*, 20 Mo. App. 653. *Hackett* v. *Gihl*, 63 Mo. App. 447; *McDonald* v. *Moore*, 65 Iowa 171, 21 N. W. 504; *Dunn* v. *Mo. Pac. R. R. Co.*, 45 Mo. App. 29. Though the cases appear to be about equal numerically on each side, the more carefully reasoned cases and authoritative text writers uphold the law announced in the principal case.

HEALTH—ISOLATION OF PERSON AFFLICTED WITH CONTAGIOUS DISEASE—INJUNCTION AGAINST BOARD OF HEALTH—CONSTITUTIONAL RIGHT TO LIBERTY. —Complainant, a lady of culture and refinement, advanced in years, while acting as a missionary in Brazil, was stricken with anaesthetic leprosy. On returning to the city of A, on the opinion of a distinguised specialist that her disease was not contagious, she had mingled freely in society. Upon complaint made, and after due investigation, the board of health of the city ordered the complainant's removal to the city hospital or pest house until a more suitable abode could be provided for her. Considering the condition of the pest house, it formerly having been used for the isolation of negroes with smallpox, and its unhealthy location, the city council had agreed to erect a suitable cottage as soon as practicable. An order for an injunction restraining complainant's removal having been granted in the lower court, this court on appeal, *Held,* that as the maintenance of strict quarantine of complainant's premises would afford complete protection to the public, and as removal to the pest house under the present conditions would imperil the health of complainant, the court would enjoin the action as arbitrary. (HYDRICK, J. dissenting), *Kirk* v. *Wyman et al., Board of Health* (1909), — S. C. —, 65 S. E. 387.

The court recognized the caution that should be exercised in interfering with the discretionary powers of a board of health, but based their action upon the ground that this was an exceptional case. Public safety is the basis for all the powers granted to such boards to interfere with the individual's